



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/633,450

07/31/2003

Robert D. Harty

0006/00921

4683

27197 7590 06/26/2009

MICHAEL J. CHERSKOV  
300 NORTH STATE STREET  
SUITE 5102  
CHICAGO, IL 60654

EXAMINER

LEWIS, KIM M

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

06/26/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/633,450	<b>Applicant(s)</b> HARTY, ROBERT D.	
	<b>Examiner</b> Kim M. Lewis	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-5, 7-11, 15-18 and 20-22 is/are allowed.
- 6) ☒ Claim(s) 6 and 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

1. The amendment filed on 1/13/09 has been received and made of record. As requested, claim 3, 6, 8, 11, 12 and 20 have been amended.
2. Claims 3-18 and 20-22 are pending in the instant application.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,334,133 ("Carroll").

As regards claim 12, Carroll , as can be seen from the attached Fig. 5, discloses a device to immobilize the head, neck and upper torso of a patient, the device comprising: a) a first substrate adapted to support for supporting the back of the patient's head; b) a second substrate in communication with the first substrate, whereby the second substrate is adapted to encircle the patient's neck; c) a third substrate in communication with the second substrate, whereby the third substrate is adapted to contacts the patient's chest; and d) one or more means (23) for removably securing the device to a backboard wherein the securing means comprises an elongated substrate having a first end (top end) attached to the first substrate of the device and a second

Art Unit: 3772

end (including the opening and bottom end) Radapted to be removably fastened to the backboard.

Re. claim 13, note Fig. 2, which discloses the geometric shape of (23) and the opening in frame (27) in which (23) mates with.

Re. claim 14, note frame (27) removable from the backboard.

### ***Claim Rejections - 35 USC § 103***

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,334,133 ("Carroll") in view of U.S. Patent No. 6,966,321 ("Hess").

Regarding claim 6, Carroll, as can be seen from the attached Fig. 5, discloses a device to immobilize the head, neck and upper torso of a patient, the device comprising: a) a first substrate adapted to support for supporting the back of the patient's head; b) a second substrate in communication with the first substrate, whereby the second substrate is adapted to encircle the patient's neck; and c) a third substrate in communication with the second substrate, whereby the third substrate is adapted to contact the patient's chest.

Carroll does not teach the claimed fourth substrate. However, Hess discloses an immobilization device for the head that comprises a removably attachable substrate adapted to contact the top of the head for the purpose of preventing the head from slipping out of a head harness. Thus, in view of Hess, it would have been obvious to provide the device of Carroll with a removably attached substrate adapted to contact the top of the head for the purpose of preventing the head from slipping out of the cervical collar. Hess fails to teach that the substrate is attached to first and second substrates, but teaches that the substrate is attached to side panels of the cervical collar. The examiner however contends that absent a critical teaching and/or a showing of unexpected results derived from attaching the substrate to the first and second substrates, the examiner contends that the point of removable attachment is a design consideration so long as the substrate holds the head in place in the cervical collar.

7. Claims 3-5, 7-11, 15-18 and 20-22 are allowed.